

Instructions For Requesting Confidential Treatment of Documents Filed With the Bureau of Insurance

If there are documents you will be submitting to the Bureau which you would like held as confidential, please:

1. include a letter identifying with specificity the documents or portions thereof for which confidentiality is being asserted and explaining with specificity the grounds upon which the assertion is being made;
2. stamp each page for which confidentiality is asserted "confidential"; and,
3. segregate these materials from those for which no confidentiality is being asserted, preferably submitting confidential materials separately in a red (consistent with our color coding scheme designed to readily distinguish confidential documents from those to which the public has access) binder, folder or envelope. If only a portion of an otherwise public document is included in the request for confidentiality, the relevant portion need not be removed from the document of which it is a part, but:
 - a) any language for which confidentiality is being asserted should appear on a separate page or pages from those pages for which no confidentiality assertion is being made;
 - b) the page or pages should be stamped "confidential"; and,
 - c) the page or pages should be copied on pink paper or be otherwise readily distinguishable from the non-confidential portion of the document.

Should the Bureau disagree with an assertion of confidentiality, you will be so notified and given an opportunity to request a hearing on the issue. To guide you in preparing a request for confidentiality letter, please review the following discussion of the law regarding records in the possession of state agencies.

Freedom of Access

As a general proposition, the presumption regarding State Agency records is that they are available for public scrutiny pursuant to the requirements of Maine's Freedom of Access Law. Exceptions to this presumption will be reviewed below. Maine's Freedom of Access Law can be found at Title 1 M.R.S.A. §§ 401-410. The law's declaration of public policy states that:

public proceedings exist to aid in the conduct of the people's business...actions are to be taken openly, records of action open to public inspection and deliberations conducted openly.

Section 408 of the law states that:

except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record.

"Public records" are defined in section 402(3) to include:

any written, printed or graphic matter or any mechanical or electronic data compilation ...that is in the possession or custody of an agency or public official of this State...and has been received or prepared for use in connection with the with the transaction of public or governmental business.

The general statement of public access to Bureau of Insurance records appears in 24-A M.R.S.A. § 216(2), which states (excerpt):

All records of the Bureau shall be subject to public inspection, except as otherwise expressly provided by law as to particular matters and except that records, correspondence and reports of investigation in connection with actual or claimed violations of this Title or prosecution or disciplinary action therefor shall be confidential.

Exceptions To The General Rule Of Public Access

Section 402(3) of Maine's Freedom of Access Law excepts from the definition of public records: 1) records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; and, 2) records that have been designated confidential by statute.

**Records That Would Be Within The Scope Of A Privilege
Against Discovery Or Use As Evidence**

The Maine Rules of Evidence privileges relevant to practice before the Bureau of Insurance include Rule 502, Lawyer-Client Privilege, and Rule 507, Trade Secrets.

Rule 502, Lawyer-Client Privilege

Because the Bureau is a public agency, its ability to decline public access to records on the grounds of lawyer-client privilege are limited by Rule 502(d)(6) to:

communications concern[ing] a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

Rule 507, Trade Secret

Rule 507 states in relevant part:

A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.

Maine's Uniform Trade Secrets Act, Title 10 M.R.S.A. §§ 1541-1548, defines a trade secret in § 1542(4) as:

information, including, but not limited to, a formula, pattern, compilation, program, device, method, technique or process that:

A. Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

B. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Confidentiality assertions should justify the request for confidentiality consistent with the requirements of Maine's Freedom of Access Law, and should reference the appropriate supporting provision of law upon which the assertion rests. If you have any questions, please don't hesitate to contact the Bureau's Legal Division.

